SBCivil Writ Petition No.6169/2003

Pannalal
v.
Mohd.Umar & Anr.

Date of Order :: 15th May, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.L.Jain, for the petitioner.
Mr. Jitendra Gang, for the respondent No.1.

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This petition under Article 227 of the Constitution of India is preferred by the petitioner defendant giving challenge to the order dated 16.10.2003 passed by Additional District Judge (Fast Track), Merta rejecting the application preferred under Section 65-A of the Indian Evidence Act seeking permission for producing secondary evidence.

The facts in brief are that the plaintiff respondent by way of filing a suit before the trial court sought a decree for recovery of arrears of rent, enhancement of rent and eviction from the premises on various grounds including bonafide necessity. In written statement the petitioner defendant stated that the shops in question were taken at the rent of Rs.25/- per month and the rent was increased time to time. It was also stated that the rent was settled at Rs.425/- per month w.e.f. 1.1.1993 and then a demand was made by the landlord to increase the rent in tune of Rs.1000/- per month, however, the parties agreed that the petitioner defendant will pay Rs.50,000/- as

an advance and this amount shall be adjusted against rent per month as Rs.425/- per month per shop. The agreement as stated above or its copy which is termed as rent deed by the petitioner defendant was not placed on record alongwith written statement.

The defendant petitioner filed an application under Section 65-A of the Indian Evidence Act for leading secondary evidence pertaining to rent note as the same was not produced by the plaintiff. The plaintiff respondent filed a reply to the application preferred under Section 65-A of the Indian Evidence Act stating therein that the document which is sought to be placed on record to lead secondary evidence is absolutely non-existent, the document photocopy of which is placed alongwith the application is forged and it does not bear signatures of the plaintiff. It was also stated that the document required to lead secondary evidence is inadmissible in evidence being a non registered document though is required to be registered being a compulsory registrable document under Section 17 of the Indian Registration Act. An objection was also taken to the effect that photocopy of the document should have been filed or at least referred in the list of documents while submitting written statement but it was not done and, therefore, the application under Section 65-A of the Indian Evidence Act requires to be rejected.

Learned trial court rejected the application preferred by the petitioner on the count that the document being valued of more than Rs.50,000/- and for having currency period of more than one year was required to be registered being a compulsory registrable document under Section 17(c) of the Indian Registration Act but being not registered is inadmissible in evidence, therefore, the permission as sought by the petitioner to lead secondary evidence by placing the document aforesaid on record could not be granted. The trial court also held that the alleged rent note which was not written by paying sufficient stamp duty, could not be admitted in evidence.

While giving challenge to the order impugned it is contended by counsel for the petitioner that the trial court erred while treating the document as a compulsory registrable document by treating the same as a lease. According to counsel for the petitioner the document is only an agreement and, therefore, it is not compulsory registrable. It is also urged that if a document is not properly stamped then too it can be looked into in evidence for colateral purposes.

Per contra, it is contended by counsel for the respondent that no error is committed by the trial court warranting interference of this Court under Article 227 of the Constitution of India. According to

counsel for the respondent the powers of High Court under Article 227 of the Constitution of India are supervisory in nature and are required to be examined in exceptional circumstances only to rectify errors pertaining to jurisdiction. Beside the above, on merits too the counsel for the respondent urged that the document concerned is not at all in agreement as admittedly it does not bear signatures of the plaintiff.

Heard counsel for the parties.

This Court in the case of Shree Gopal v. Additional Civil Judge (JD) No.8, Jodhpur & Anr., SBCivil Writ Petition No.2798/2004, decided on 14th March, 2005, while discussing the powers of this Court under Article 227 of the Constitution of India summarised the same as under:-

> "1.By Article 227 of the Constitution the power of superintendence is conferred on the High Court with paramount consideration for paving the path of justice and removing any obstacles therein.
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> 2.The power of superintendence conferred by Article 227 is to be exercised sparingly and only in appropriate cases, in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. Meaning thereby that the power under Article 227 of the Constitution can be

exercised in such cases where the court subordinate.-

(i)acted with erroneous assumption or acting beyond jurisdiction,

(ii)refused to exercise jurisdiction vested with it,

(iii)exercised its powers, authority or discretion capriciously and arbitrarily,

(iv)committed a patent error in procedure and there is a perverse finding which is based on no evidence or material or resulting in manifest injustice.

3.The High Court may feel inclined to intervene where the error is such, as if not corrected at that very moment, may become incapable of correction at a later stage.

4.The High Court cannot, in exercise of its jurisdiction under Article 227 of the Constitution, convert itself into a court of appeal. Accordingly the power is not available to be exercised to correct mere errors whether on the facts or laws. The mere misconception on a point of law or a wrong decision on facts which can be corrected in appeal are in normal course not required to be adjudicated under Article 227."

This Court while exercising powers under Article 227 of the Constitution of India is required to act within the limitations as narrated above. In

the instant matter the counsel for the petitioner failed to satisfy the Court as to how the trial court committed any error touching to its jurisdiction. The irregularities or even illegalities as pointed out by counsel for the petitioner if any exists even then powers under Article 227 of the Constitution of India are not required to exercise for their rectification as the defendant petitioner shall be having ample opportunity to challenge the same before the appellate court if any occasion arose for that. Section 105 of CPC also provides that where a decree is appealed from any error, defect or irregularity in any order effecting decision of the case may be set forth as a ground of objection in the memo of appeal. The petitioner, therefore, shall be having an opportunity to challenge the findings given by the trial court before the appellate court if any such occasion will arise.

In view of whatever discussed above, I do not find any case in favour of the petitioner which may warrant interference of this Court at this stage under Article 227 of the Constitution of India. Accordingly, this petition for writ is dismissed.

(GOVIND MATHUR),J.

kkm/ps.